

APPEAL NO. 010439

Following a contested case hearing held on February 6, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant herein) suffered a compensable repetitive trauma injury to her upper left extremity; that the date of the injury was _____; and that the claimant did not report her injury to her employer until June 4, 1999. The hearing officer concluded that the respondent (carrier herein) is relieved of liability because the claimant failed to timely report the injury to the employer. The claimant appealed and the carrier responded to the appeal.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ).

In the present case, the issue of timely notice turned on the issues of date of injury and the date the claimant notified the employer of her injury. The claimant contends on appeal that there was insufficient evidence to support the findings of the hearing officer that the date of injury was _____, and that the claimant did not report the injury until June 4, 1999. Both of these matters are questions of fact. While there was conflicting evidence regarding them, it was incumbent on the hearing officer to weigh the evidence and to resolve these issues as the finder of fact. In reviewing whether there is sufficient evidence to support a factual finding of a hearing officer, our standard of review is whether the factual determination of the hearing officer is so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard we find sufficient evidence to support the hearing officer's findings as to the date of the claimant's injury and the date she reported her injury to the employer.

The hearing officer found that a reasonably prudent person would have reported the injury prior to June 4, 1999. This is the factual standard we have found to be determinative of good cause. Based upon this finding, which we do not find contrary to the great weight and preponderance of the evidence, the hearing officer was correct in not concluding that good cause existed for the claimant's failure to timely report her injury.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge